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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In The Matter of )

Billed Party Preference for )  
InterLATA 0+ Calls )

CC Docket No. 92-77

PETITION FOR WAIVER

IOS Operator Services, Inc. ("IOS"), by its attorneys and pursuant to Section 1.3 of the Commission's rules,<sup>1</sup> respectfully requests a waiver of the July 1, 1998 implementation date of Sections 64.703 and 64.710<sup>2</sup> of the Commission's rules, adopted in the *Second R & O* in the above captioned proceeding.<sup>3</sup> The Commission has recently determined, in its *Waiver Order*, that good cause exists to grant waivers to parties that face technical obstacles that will delay implementation of the new rate disclosure rules.<sup>4</sup> Although IOS has implemented the rate disclosure to the calling party for its live operator-handled calls, IOS faces the same technical obstacles with respect to its automated calls as the carriers listed in the *Waiver Order*. Thus, it is appropriate, fair and in the public interest for the Commission to similarly grant a waiver to IOS. Specifically, IOS requests that the Commission grant a waiver of the implementation date for its

<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. §§ 64.703 and 64.710.

<sup>3</sup> *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 released Jan. 29, 1998 ("*Second R & O*"). The Petitions for Reconsideration and/or Clarification of the *Second R & O* were filed with the Commission on April 9, 1998 and published in 63 Fed. Reg. 19726 (April 21, 1998).

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automated calls until October 31, 1998 and for its collect and inmate operator service calls until December 31, 1998.

### Introduction

In the *Second R & O*, the Commission ordered that operator service providers (“OSPs”) that provide interstate operator services at aggregator locations and that provide inmate operator services must comply with the new rate disclosure requirements by July 1, 1998.<sup>5</sup> However, the Commission noted that it was prepared to consider waiver requests “on a specific factual showing of good cause.”<sup>6</sup> Pursuant to this statement, several parties requested a waiver of the July 1, 1998 compliance date.<sup>7</sup> Upon review, the Commission found that many of these parties had successfully shown “special circumstances” and the existence of “technical problems that will delay the implementation of the Commission’s rules.”<sup>8</sup> Accordingly, the Commission granted their requests for waiver. Despite the commonality of the parties’ description of the technical problems, the Commission issued a waiver only to the named parties.

IOS provides live and automated operator services from aggregator locations throughout the country. IOS is working hard to develop the technical capability to comply with the new rate

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(...continued)

<sup>4</sup> *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, Order, CC Docket No. 92-77, released June 30, 1998 (“*Waiver Order*”).

<sup>5</sup> Carriers using store-and-forward payphones were given until October 1, 1999 to comply with the new rules.

<sup>6</sup> *Second R & O*, 13 FCC Rcd at 6139.

<sup>7</sup> See, e.g., AT&T Petition for Waiver; LCI Petition for Limited Waiver; Amended MCI Petition for Waiver; McLeodUSA Telecommunications Services, Inc., Consolidated Communications Telecom Services, Inc., Consolidated Communications Public Services, Inc., and Consolidated Communications Operator Services, Inc. Joint Petition for Waiver.

<sup>8</sup> *Waiver Order* at 3.

disclosure rules. It has implemented rate disclosure to the calling party for its live operator handled calls. However, like the parties that have recently received waivers, IOS faces unanticipated technical problems in modifying its automated call processing systems. IOS cannot at this time provide the option of obtaining automated call rating, as would be necessary to comply with the new rules on its automated calls. As a result, IOS has been unable to implement the changes required to comply with the rate disclosure rules for those calls processed through its automated call processing systems. IOS expects that it will be able to implement a rate quote option to the called party in its automated call systems by the end of October 31, 1998, and to the billed party on collect and inmate calls by December 31, 1998. Therefore, IOS requests that the Commission, in the interest of equity and consistency, grant it a waiver similar to the ones already granted -- until October 31, 1998 for automated calls and December 31, 1998 for collect and inmate calls.

**I. The Commission Has Already Concluded that Good Cause Exists to Grant Waivers of its Rate Disclosure Rules**

Under Section 1.3 of its rules, the Commission may waive any provision of its rules upon a showing of good cause.<sup>9</sup> The waiver process acts as “a safety valve” to account for special circumstances or unique hardships faced by a carrier.<sup>10</sup> Indeed, the Commission has a duty to

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<sup>9</sup> 47 C.F.R. § 1.3. See *Rio Grande Radio Fellowship Inc. v. FCC*, 406 F.2d 664 (1968); *Wait Radio v. FCC*, 418 F.2d 1153 (1969).

<sup>10</sup> *Wait Radio* at 1157.

serve the “public interest.”<sup>11</sup> Pursuant to this duty, the Commission must be prepared to waive general requirements in cases where the public interest would require such a waiver.<sup>12</sup>

In the *Waiver Order*, the Commission found that it was in the public interest to grant certain waivers because several parties’ requests highlighted special circumstances that constitute good cause. Specifically, the parties detailed the unavoidable financial and technical obstacles to meeting the original implementation date. In granting the waivers, the Commission established a clear pattern. With respect to each of the parties, the Commission (1) concluded that a waiver for all operator services until October 31, 1998 is reasonable and in the public interest, and (2) acknowledged that, due to the technical difficulties involved in the use of live operators as an interim solution, a waiver until December 31, 1998 for collect and inmate calls, if applicable, is appropriate.

Significantly, the Commission granted identical waivers virtually across the board for carriers facing similar problems.<sup>13</sup> Despite the fact that several parties did not even mention collect calls or inmate operator services, the Commission recognized the technical difficulties inherent in transferring calls to live operators. Thus, to establish consistency, in addition to the October 31, 1998 extension for all operator service calls, the Commission gave all of these parties until December 31, 1998 for collect and inmate operator calls, if applicable.<sup>14</sup>

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<sup>11</sup> See 47 U.S.C. § 309(a); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956).

<sup>12</sup> See *National Broadcasting Co. v. United States*, 319 U.S. 190, 225 (1943).

<sup>13</sup> See, e.g., *Waiver Order* at 8 (granting waiver to AT&T); *Id.* at 9 (granting waiver to Cleartel Communications, Inc., Operator Service Company and Teltrust Communications Services, Inc.); *Id.* at 10 (granting waiver to McLeodUSA); *Id.* at 11 (granting waiver to Sharenet).

<sup>14</sup> *Id.*

For example, despite the fact that American Network Exchange, Inc. (“AMNEX”) did not mention collect calls or inmate calls, the Commission granted, *sua sponte*, a waiver of its rules until December 31, 1998, with respect to these calls in order “to create consistency in implementation dates” in light of the extensions granted to other parties.<sup>15</sup> Clearly, the Commission recognizes that the public interest is best served through consistent application of implementation dates. Moreover, because IOS competes with many of the carriers to whom a waiver was granted, consistency will avoid placing IOS at a competitive disadvantage vis a vis these carriers.

## **II. The Commission Should Grant IOS a Waiver of its Rate Disclosure Rules to the Same Extent Granted to Similarly Situated Parties in the *Waiver Order***

In order to comply with the Commission’s new rules, IOS has initiated a project to develop an automated interface between the operator system’s automated positions and the rate and property databases that support the basic operator system. When complete, this system interface will provide the availability announcement and automated rate quotes to the called party using automated positions for all operator service calls, and, in the case of collect or inmate calls, also to the billed party. These modifications will also alert a live operator upon transfer if a rate quote has been given and the caller subsequently elects to transfer to a live operator. Additional modifications will be made to the auto-live transfer capabilities and to the live operator rating capabilities to ensure the rapid and efficient provision of live rate quotes.

For live operator handled service calls, IOS has implemented a temporary solution to allow a live operator to provide the calling party with the rate disclosure required by the

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<sup>15</sup> *Waiver Order* at 7.

Commission's rules. However, with respect to automated calls that require system alterations, IOS is facing unanticipated technical problems that prevent compliance. Indeed, IOS is in the same situation as the other parties in this proceeding that have received waivers based upon a Commission finding of good cause. Like AMNEX, IOS is in the process of implementing a system that will provide customers with automated call rating.<sup>16</sup> Until such a time, AMNEX explained that the process of transferring customers to a live operator, to comply with the rules, results in customer inconvenience and increased operator time.<sup>17</sup> IOS has encountered the same difficulties. Like ANMEX, the extra burden on IOS live operators will be "enormous."<sup>18</sup> Thus, given that there is no material difference between IOS and parties, such as ANMEX, that have received waivers, the Commission should grant the same waiver to IOS.

Accordingly, IOS requests that the Commission grant it a waiver of its rate disclosure rules for automated calls until October 31, 1998 and for collect and inmate calls until December 31, 1998. A refusal to grant this waiver would result in the inequitable situation in which parties facing identical technical problems have different dates by which they are required to comply with the Commission's new rate disclosure rules.

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<sup>16</sup> AMNEX Waiver Request at 2 (filed June 26, 1998).


<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.*

### **Conclusion**

In its *Second R & O*, the Commission determined that oral disclosure of rate information at the point of purchase will better able consumers to make informed decisions as to their 0+ calls and also further competition in the OSP marketplace. Thus, the Commission amended its rules to require that all OSPs must comply with the new rules. IOS does not argue with the policy furthered by these rules. Rather, IOS requests a waiver of the rules only for automated calls for a period of a few months, and for collect and inmate operator calls for a slightly longer time. Granting this waiver would further the Commission's goal of consistency in implementing its rules.

Respectfully Submitted,



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